



KENAI PENINSULA BOROUGH

Coastal Management Program

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**JOHN J. WILLIAMS
BOROUGH MAYOR**

August 12, 2008

Mr. Randy Bates, Director
Division of Coastal and Ocean management
Department of Natural Resources
P.O. Box 111030
Juneau, Alaska 99811-1030

Subject: ACMP Re-evaluation

Dear Mr. Bates:

This writing responds to the Division of Coastal and Ocean Management's (DCOM) request for comments regarding the re-evaluation of the Alaska Coastal Management Program (ACMP). We appreciate the resources and effort that the DCOM has applied to the ACMP re-evaluation process.

The issues we will comment on address the relocation of the ACMP to the Division of Community and Regional Affairs (DCRA) the development of enforceable policies that accomplish the objectives of AS 46.40.020, the "carve-out" of the Department of Environmental Conservation from the ACMP process and the statewide standards of the of the ACMP.

ACMP Statewide Standards

Current regulations severely limit the ability of coastal districts to obtain enforceable policy approval from the Department of Natural Resources because the statewide standards have narrowed or eliminated the purview of coastal districts regarding certain coastal uses and resources.

Habitat Standards: The habitat standard at 11 AAC 112.300 limits the scope of enforceable policy in habitats to "coastal waters"(waters with measurable amounts of salinity). That restriction eliminates the opportunity for districts to take a watershed approach in the evaluation of ecosystem impacts and is inconsistent with the objectives of AS 46.40.020 and in particular subsection (8): the full evaluation of all demands on the land and water in the coastal area. The habitat standard should be amended to include all impacts, direct and cumulative, to habitat within the coastal district including fresh water wetlands.

Air and Water Quality Standards: The standard at 11 AAC 112.310 removes the ability of districts to comments on these important ecosystem issues. Air and water quality matters overlap virtually all issues in coastal districts and, as we have learned from more developed areas, are essential to ecosystem health. The intent is not to duplicate or assume the authority of DEC in the regulation of air and water quality but the ability to write enforceable policies that are not duplicative and that allow for local government perspectives in the review process.

Designated Areas: Current state standards require scientific analysis and extensive mapping to meet the criteria for obtaining a designation and to write enforceable policies. This standard places a significant burden on a district to conduct studies that provide meaningful results. Districts should be able to designate areas containing important resources and write enforceable policies based substantial anecdotal information or in light of information found subsequent to district plan adoption. We support the ability of state and local agencies to designate hazards during public review in 11 AAC 112.210, Natural Hazards, and in 11 AAC 114.250, Subject Uses and Designations. The reference to designations should be removed in 11 AAC 112.270, Subsistence, 11 AAC 112.300, Habitat, and 11 AC 112.320, Historic Areas.

Sequencing Process to Avoid, Minimize, or Mitigate: Under 11 AAC 12.900, evaluations to determine impacts in district enforceable policies includes the terms “avoid, minimize, or mitigate” and rely on the definition of “practicable” as the means of assessing the whether an applicant has avoided or minimized impacts. The term “practicable” is defined by the ACMP as the project’s feasibility considering economic, technological and logistical matters. The definition of “practicable” should be changed to define what is “feasible and prudent” in the protection of the environment from significant adverse impacts. With regard to mitigation, statutes and regulations should provide for compensatory mitigation when avoidance and minimization are not feasible and prudent.

Enforceable Policy Development

In keeping with the protection of the environment of coastal areas as called out in AS 46.40.20, there are several changes that should be affected in statutes.

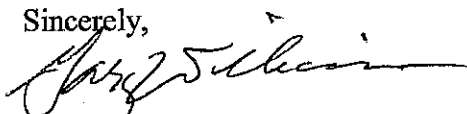
- 1) AS 46.40.070(a)(2)(c)(ii), allows coastal districts to write enforceable policies unless the matter is “adequately addressed” in state or federal law. The definition of “adequately addressed” in our experience is what DNR says it is not whether the state or federal agencies actually has or administers a particular law. This provision should be removed.
- 2) AS 46.40.070(a)(2)(c)(ii), many district policies have been disallowed because the policy did not “flow from” specific state or federal law. The concept of “flow from” should be removed from the enforceable policy evaluation or provide that unless a specific state or federal law addresses the matter in a way the local policy does not, then the local policy should be allowed.
- 3) AS 46.40.070(a)(2)(c)(iii), requires a coastal district to find a specific coastal use of “unique concern” and to demonstrate that uniqueness by local usage or scientific evidence. This level of documentation is burdensome in areas where little scientific evidence has been accumulated in sensitive habitats and local usage may be sparse. The term “unique concern” is highly interpretable and should be removed from the statute.

Relocation of the ACMP

While it is arguable that with statutory and regulatory guidance a program can be effective under a variety of umbrella agencies, our experience with the ACMP under the Department of Natural Resources has been unfavorable compared our experience when the ACMP was in the Governor's Office and had the guidance of the Coastal Policy Council. From our perspective the significant changes in the ACMP and its relocation to DNR have combined to reduce the effectiveness of the Program both in fact and in public perception. We suggest that moving the ACMP to a permit-neutral, community advocacy agency would signal that the ACMP is seeking to regain its proper and appropriate role in Alaska coastal management. The best alternative agency would be the Division of Community and Regional Affairs.

We sincerely appreciate your efforts to coordinate a meaningful restructure of the ACMP.

Sincerely,

A handwritten signature in dark ink, appearing to read "Gary Williams", with a stylized flourish at the end.

Gary Williams
Kenai Peninsula Borough
Coastal District Coordinator